

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Francis P. Harvey & Sons, Inc.,)
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)
 Plaintiff)
)
)
 v.) Case No. 04-40228-FDS
)
)
Commissioner of the Internal Revenue Service,)
)
)
 Defendant)

STIPULATION

The parties, through undersigned counsel, hereby stipulate to the following:

1. From 1994 through 2004, there were certain payments made by Francis P. Harvey & Sons, Inc. ("Harvey") towards employment taxes, interest and penalties that were not designated by Harvey for a certain tax period ("Non-designated Tax Payments"). The parties stipulate that the IRS applied all of these Non-designated Tax Payments to the oldest outstanding taxes, interest and penalties the IRS alleges were outstanding at the time.

2. There were no employment tax payments made by Harvey from 1994 through 2004 that were designated by Harvey to a certain tax period which the IRS diverted and applied towards another tax period.

3. The parties disagree on the legal issue of whether the IRS was legally entitled to take Non-designated Tax Payments and apply them to the oldest outstanding taxes, interest and penalties the IRS alleges were due at the time. Harvey contends that such an allocation by the IRS violates applicable law. The IRS contends that this allocation of Non-designated Tax Payments in conformance with IRS policy and procedures is in accordance with applicable law.

The Parties have agreed that the Court shall resolve this legal dispute regarding the IRS's application of Non-designated Tax Payments.

Respectfully submitted,

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